IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No. 918 of 2007

For Approval and Signature:
HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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RANDHIRSINH DIPSINH PARMAR - Applicant(s)
Versus
STATE OF GUJARAT & 7 - Respondent(s)

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Appearance :
MR SV RAJU FOR MR HIMANSHU K PATEL for Applicant(s) : 1,
MR KT DAVE ADDL.PUBLIC PROSECUTOR for Respondent(s) : 1,
MR ASHISH M DAGLI for Respondent(s) : 2,
M/S THAKKAR ASSOC. for Respondent(s) : 3,
UNSERVED-REFUSED (N) for Respondent(s) : 4, 6,
RULE SERVED BY DS for Respondent(s) : 5, 7,
UNSERVED-EXPIRED (N) for Respondent(s) : 8,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 30/11/2007

ORAL JUDGMENT

1. By way of this petition under Article 226 of the Constitution of India read with sections 397, 482 and 483 of the Code of Criminal Procedure, the petitioner

has prayed for an appropriate writ, order or direction setting aside the impugned order dtd.14/2/2005 passed below application Ex.4 in Criminal Case No.3 of 2004, by the learned Judicial Magistrate (First Class), Surat, by which the learned trial court has passed order of recalling police investigation which was ordered under sec.156(3) of the Code of Criminal Procedure for the offences which are non-compoundable namely under sections 406, 420, 467, 468, 471, 504, 506(2) read with sec.114 of Indian Penal Code.

2. The respondent No.2 – Surajben widow of Badharsinh alias Babarsinh Chauhan, filed one criminal complaint in the court of learned Judicial Magistrate (First Class), Valod being Criminal Case No.3 of 2004 against the respondent Nos.3 to 8 herein for the serious offences punishable under sections 406, 420, 467, 468, 471, 504, 506(2) read with sec.114 of Indian Penal Code alleging inter-alia that the husband of the complainant namely Badharsinh alias Babarsinh Ratanji had expired on 10/6/1967 and the entry to that effect was registered with the Government Office. That the elder brother of the complainant's husband namely Becharsinh Ratansinh

had expired on 11/3/1957 and the entry to that effect was also registered with the office of the Panchayat. That another elder brother of the husband of the complainant namely Kubersinh Ratanji Chauhan had expired on 14/1/1960 but the entry to that effect was not registered and therefore, the complainant sworn an affidavit stating the date of the death; that the father-in-law of the complainant namely Ratanji Bhulabhai Chauhan was having agricultural land bearing Survey No.220 admeasuring about 10 Gunthas, situated at Virpore, Taluka Valod, District Surat and after his death, the name of Becharsinh, Kubersinh and Badharsinh were entered in the revenue record on 27/7/1929 vide Entry No.43. It was further alleged in the complaint that when the complainant got copy of the revenue record in respect of the aforesaid land, she came to know that the name of one Satyajitbhai Ballubhai Desai is entered and when she inquired about the same from the Talati-cum-Mantri, he gave evasive reply. That on further inquiry, she came to know that said Satyajitbhai Ballubhai Desai has created a bogus and forged power of attorney of late Becharbhai Ratanjibhai, Kuberbhai Ratanjibhai and Badharbhai Ratanjibhai in the name of one

Mr.Jaydipbhai Ranchhodbhai Solanki who is a fictitious person. It was further alleged in the complaint that the accused persons have created bogus and forged power of attorney on 29/7/2003 in collusion with each other which is bearing signature of late Kuberbhai, late Babarbhai and late Becharbhai and the said forged power of attorney created by the said Satyajitbhai Ballubhai Desai and one Pavanbhai Durlabhbhai stood as guarantor. It was further alleged that on the basis of said bogus and forged power of attorney, said Jaydipbhai Ranchhodbhai executed registered sale deed on 2/8/2003. Thus, the said Satyajitbhai Ballubhai Desai in collusion with other accused persons created bogus power of attorney of late Babarbhai, late Becharbhai and late Kuberbhai, who have expired long back and created forged sale deed. It was further alleged by the complainant in the complaint that as per her knowledge, accused No.1 has created fictitious persons i.e. accused Nos.2 and 4 and created bogus power of attorney bearing signature of the Government Officials after making signatures of the persons who have expired long back. That sale agreement executed on the basis of bogus power of attorney which was prepared by the accused No.3,

signed by the accused No.1 as purchaser of the stamp, accused No.3 identified the accused No.2 and accused No.5 and accused No.1 have made false and forged signatures and thus created bogus registered sale deed. It was further alleged in the complaint that the complainant gave complaint to Buhari Out Post Police Station but since the accused No.1 is a politician and builder, the police had not taken any steps. It was also further alleged in the complaint that after coming to know about the aforesaid complaint, the accused Nos.1, 3 and 6 have given threat of dire consequences to the complainant.

3. That the learned Magistrate, after considering the averments and allegations in the complaint and after hearing the learned advocate appearing on behalf of the complainant, passed reasoned order dtd.18/3/2004 directing police investigation under sec.156(3) of the Code of Criminal Procedure, directing Valod Police Station to register the complaint as M.Case / FIR and directing the Dy.Superintendent of Police, Vyara to look into the complaint and investigate the offence. While passing the said order, the learned Magistrate observed

that on considering the complaint and after hearing the learned advocates, it appears that the accused, in connivance with each other have made false and fabricated signatures and created bogus and forged documents and used the same as genuine documents and the accused persons are very influential and therefore, local police will not be in a position to investigate the case and therefore, looking to the serious offence, investigation is to be carried out by the higher officials. By making such observations, the learned Judicial Magistrate (First Class) passed order for investigation under sec.156(3) of the Code of Criminal Procedure by the Dy.Superintendent of Police.

4. Thereafter, pursuant to the aforesaid order dtd.8/3/2004, complaint was sent to the Valod Police Station which was registered as M.Case No.3 of 2004. That investigation was in progress and before any final report or charge-sheet is submitted under sec.173 of the Code of Criminal Procedure, respondent No.2 – original complainant gave an application stating that the matter has been settled and investigation by the police is pending and the final report has not been submitted and as the complaint is to

be withdrawn, it was requested to recall the complaint from the police investigation and order of investigation be recalled so that the complaint can be disposed of. That the said application was submitted on 14/2/2005. The learned Magistrate passed the impugned order dtd.14/2/2005 below application Ex.4 directing the police to stop the investigation and asked the police to return the papers of investigation and the complaint. Being aggrieved and dissatisfied with the impugned order passed below application Ex.4 dtd.14/2/2005 stopping further investigation by the police and directing to recall the complaint from the Dy.Superintendent of Police without investigation, the petitioner has preferred present petition under Article 226 of the Constitution of India read with secs.482, 483 and 397 of the Code of Criminal Procedure.

5. Mr.S.V. Raju, learned counsel appearing on behalf of the petitioner has vehemently submitted that the impugned order passed by the learned Magistrate recalling complaint after it is sent for investigation under sec.156(3) of the Code of Criminal Procedure, is without jurisdiction and unknown to the Code of Criminal

Procedure. It is submitted that once the police investigation is ordered by the Magistrate, learned Magistrate becomes functus officio and the learned Magistrate ceases to have any power for the investigation. It is submitted that as held by the Hon'ble Apex Court in catena of decisions, investigation of the offence is exclusive domain of the police and the magistrate does not have any power to guide the investigation. After investigation is ordered, it is for the police either to submit charge-sheet under sec.173 of the Code of Criminal Procedure or to submit appropriate final report, but the Magistrate cannot direct the police either to stop the investigation or to submit summary report or even to submit a charge-sheet. It is further submitted that the offences alleged in the complaint are non-compoundable and the FIR discloses serious offence and non-bailable offence and once the police is ceased with the matter and investigating the offence, the learned Magistrate has no power to recall his earlier order of inquiry under sec.156(3) of the Code of Criminal Procedure. It is further submitted that the learned Magistrate does not possess any inherent power and the order under sec.156(3) of the Code of Criminal

Procedure can only be set aside by superior courts.

6. So far as the objection raised by the learned advocate on behalf of the respondents with respect to the locus-standi of the petitioner is concerned, it is submitted by Mr.Raju, learned counsel for the petitioner that in view of the decision of the Hon'ble Supreme Court in the case of Sheonandan Paswan Vs. State of Bihar, reported in (1987) 1 SCC 288 (para 14 and 16), the petitioner would have locus to file the petition and allegation of malafide, even assuming there exists, would be of no relevance. It is submitted that as held by the Hon'ble Supreme Court in the aforesaid decision, criminal proceeding is not a proceeding for vindication of a private grievance but it is a proceeding initiated for the purpose of punishment to the offender in the interest of the society and it is for maintaining stability and orderliness in the society that certain acts are constituted offences and the right is given to any citizen to set the machinery of the criminal law in motion for the purpose of bringing the offender to the book. It is further submitted that as held by the Hon'ble Supreme Court in the aforesaid decision if any citizen can lodge a FIR or file a complaint and set the

machinery of the criminal law in motion and his locus standi to do so cannot be questioned, why a citizen who finds that the prosecution for an offence against the society is being wrongly withdrawn, cannot oppose such withdrawal.

7. He has relied upon the decisions of the Hon'ble Supreme Court in the case of A.R. Antulay Vs. R.S. Nayak, reported in (1984) 2 SCC 500; in the case of Manohar Lal Vs. Vinesh Anand and others, reported in (2001) 5 SCC 407 and in the case of Vishwanath Chaturvedi Vs. Union of India and others, reported in (2007) 4 SCC 380, in support of his submission that the petitioner has locus standi to file the present petition and to object to withdrawal of the complaint involving serious offence. It is further submitted that as observed by the Hon'ble Supreme Court that it is well recognised principle of criminal jurisprudence that anyone can set or put the machinery of criminal law in motion. It is submitted that as observed by the Hon'ble Supreme Court, locus-standi of the complaint is concept foreign to criminal jurisdiction save and except that where the statute creating an offence provides for eligibility of the

complainant. It is submitted that the same principle would be applicable when a prosecution for serious offence is being wrongly withdrawn.

8. Alternatively it is submitted that the present petition is also filed under sec.397 of the Code of Criminal Procedure and if any illegality is brought to the notice of the Court, then the Court can exercise suo-motu powers also. In support of his above submission, learned counsel for the petitioner has relied upon the decision of the Hon'ble Supreme Court in the case of Nadir Khan Vs. the State (Delhi Administration), reported in (1975) 2 SCC 406 (para 4) as well as the following decisions:-

(i) decision of the Hon'ble Supreme Court in the case of K.Pandurangan Vs. S.S.R. Velusamy & Anr., reported in (2003) 8 SCC 625.

(ii) decision of the Full Bench of the Allahabad High Court in the case of Shailabala Devi Vs. Emperor, reported in AIR 1933 Allahabad 678.

(iii) decision of the Madhya Pradesh in the case of Purshottam Vijay and ors. Vs. the State and others, reported in 1982 Criminal Law Jurisdiction 243 (para 10

and 11).

9. Relying upon the above decisions, it is submitted that irrespective of the question of petitioner having locus-standi, the question which they have raised in the petition are important enough as would have led this court even suo-motu to take cognizance.

10. So far as merits of the case and the legality and validity of the impugned order passed by the learned Magistrate is concerned, It is submitted that by the impugned order, the learned Magistrate has recalled his earlier order of sending complaint for investigation under sec.156(3) of the Code of Criminal Procedure by Dy.Superintendent of Police and looking to the scheme of the Code of Criminal Procedure, the learned Magistrate does not possess any such inherent powers.

11. It is submitted that there is no express provision enabling the learned Magistrate to recall his order of directing the police investigation. It is submitted that in absence of existence of specific provisions of law, the learned Magistrate has no jurisdiction to recall his

earlier order. In support of his above submissions, he has relied upon the decisions of the Hon'ble Supreme Court in the case of Adalat Prasad Vs. Roopal Jindal & Others, reported in (2004) 7 SCC 338 (para 15 and 16) and in the case of Subramanium Sethuraman Vs. State of Maharashtra & Another, reported in 2005 SCC (Criminal) 242 (para 14).

12. It is also further submitted that even otherwise the order of the learned Magistrate virtually amounts to interfering with the investigation which was being carried out by the police or the investigating officer and the learned Magistrate has virtually exercised power of investigation and virtually decided not to put the accused to trial and he has formed an opinion regarding culmination of the investigation. It is submitted that the investigating officer, subject to the supervisory jurisdiction of his superior officer, has exclusive power of investigation and the said powers cannot be exercised by any authority or any court, including court of Judicial Magistrate (First Class). In support of his above submission, he has relied upon the following decisions of the Hon'ble Supreme Court:-

(i) (2000) 4 SCC 459 (R.Sarala Vs. T.S. Velu and others (paras 19, 11, 10, 12)

(ii) AIR 1968 SC 117 (Abhinandan Jha Vs. Dinesh Mishra) (Paras 9,10,11).

(iii) (2003) 6 SCC 195 (Union of India Vs. Prakash P.Hinduja & another (paras 10, 11, 15, 17, 20)

(iv) 2003 (2) SCC 649 M.C. Abraham & another Vs. State of Maharashtra & others (para 17 and 18).

(v) 2004 (7) SCC 768 (Gangadhar Janardan Mhatre Vs. State of Maharashtra & others (para 8).

13. It is submitted that from the aforesaid judgements, it emerges that the exclusive power to form an opinion regarding which accused is to be put up for trial or not is that of the police alone and the learned Magistrate by passing the impugned order exceeded the ratio of the judgements of the Hon'ble Supreme Court and has virtually carried out the investigation, which is not permissible.

14. It is further submitted that even otherwise most of the offences for which the accused persons were charged

and/or for which investigation was ordered, are non-compoundable offences and by passing the impugned orders, the learned Magistrate has permitted compounding which is contrary to the provisions of sec.320 of the Code of Criminal Procedure, which is not permissible.

15. By making above submissions, it is requested to allow the present petition and quash and set aside the impugned order dtd.14/2/2005 passed below Ex.4 in Criminal Case No.4 of 2004 and allow/continue the investigation by the Dy.Superintenent of Police as ordered earlier and direct/permit the Dy.Superintendent of Police to submit appropriate report / chargesheet.

16. Shri K.T. Dave, learned Additional Public Prosecutor appearing for the State supported the submissions made on behalf of the petitioner and has submitted that the impugned order passed by the learned Magistrate recalling order of investigation under sec.156(3) of the Code of Criminal Procedure is bad in law and unknown to the Code of Criminal Procedure. It is further submitted by the learned Additional Public Prosecutor

that once the Magistrate has ordered police investigation under sec.156(3) of the Code of Criminal Procedure, it is to be treated as a police case and it must end with the report by the police either under sec.169 or 173 of the Code of Criminal Procedure and in between the Magistrate has no jurisdiction to interfere with the same and therefore, it is requested to grant the reliefs as prayed for.

17. Mr.P.M. Thakkar, learned Senior Advocate has opposed the present petition by making the following submissions:-

(i) That the petitioner has no locus-standi to prefer the present petition and pray for the reliefs, as the petitioner is third party.

(ii) As the parties have settled the dispute, this Court should not exercise power under Article 227 of the Constitution of India and/or under sec.482 of the Code of Criminal Procedure.

(iii) As the parties have settled the dispute inspite of the fact that the offences alleged are non-compoundable, compounding of the same is

permissible.

(iv) Power invoked by the Magistrate under sec.156(3) is at a pre-cognizance stage and the power to direct investigation conferred by sec.202(1) of the Code of Criminal Procedure is at a post cognizance stage and therefore, the order passed by the learned Magistrate in the present case of recalling of the complaint from the investigating officer cannot be said as exercise of power after taking cognizance.

18. Mr.P.M. Thakkar, learned senior advocate appearing on behalf of the respondent No.3 has relied upon the following decisions in support of his submission that in case of Criminal Proceedings between private individuals, third party i.e. stranger to the proceedings has no locus-standi to interfere in any manner. He has submitted that the citations relied upon by the learned advocate appearing for the petitioner on the point of locus-standi of third party are not applicable in the present case. It is submitted that the ratio laid down in those judgements is to the effect that a third party has locus-standi to interfere in any matter which involves issue related to public administration, public morality

and affecting society at large, but the same is not applicable to the dispute of private nature. He has relied upon the following decisions :-

(I) (2006) 6 SCC 613
(Rajiv Ranjan Singh (Lalan) Vs. Union of India.

(II)(2004) 3 SCC 349
(Ashok Kumar Pandey Vs.State of W.B.

(III)AIR 1998 SC 990
(Kishan Swaroop Vs. Govt. of Nct of Delhi.

(IV)(1992) 4 SCC 666
(Karamjeet Singh Vs. Union of India.

(V)(1992) 3 SCC 653
(Simranjit Singh Mann Vs. Union of India & Anr.

(VI)(1992) 4 SCC 605
(Krishna Swami Vs. Union of India.

(VII)1991 SCC (Cri.) 933
(Janata Dal Vs. H.S. Chowdhary).

19.He has also further submitted that in the instant case this Court should not interfere with the impugned order by exercising power under sec.482 of the Code of Criminal Procedure as also supervisory jurisdiction

under Article 227 of the Constitution of India. It is submitted that powers under sec.482 of the Code of Criminal Procedure and the inherent jurisdiction can be exercised under three circumstances, namely

(1) to give effect to an order under Code of Criminal Procedure;

(2) to prevent abuse of process of Court and

(3) to secure ends of justice.

20. It is submitted that when the parties have settled the dispute and the original complainant has no objection, to continue the criminal proceedings against the respondent No.3 would not be in the interest of parties and therefore, it is requested not to exercise powers under sec.482 of the Code of Criminal Procedure. He has relied upon the following decisions in support of his above submissions:-

(I) (2005) SCC (Cri.) 242

(Subramanium Sethuraman Vs. State of Maharashtra & Anr.).

(II)(2002) 1 SCC 241

(S.W. Palanitkar & Ors. Vs. State of Bihar).

(III)(2000) 2 SCC 636

(G. Sagar Suri & Anr.Vs.State of U.P. & Ors.).

(IV)(1998) 5 SCC 749

(Pepsi Foods Limited & Anr. Vs.Spl.Judi.Magi. & Ors.).

(V)(2006) Cri.L.J. 2468

(Minu Kumari & Anr.Vs. State of Bihar).

(VI)AIR 1977 SC 1489

(State of Karnataka Vs.L.Munishwamy & Ors.).

(VII)(2006) 8 SCC 294

(Jasbir Singh Vs. State of Punjab).

(VIII)(2003) 3 SCC 524

(Sadhana Lodh Vs. National Insurance Co.Ltd.& Anr).

21. Mr.P.M. Thakkar, learned advocate appearing on behalf of the respondent No.3 has also relied upon the following decisions in support of his submission that even in non-compoundable offences also compounding is permissible and even the Courts have quashed the complaints in which allegations are with respect to non-cognizance offences:-

(I) 2007 AIR SCW 4269

(Nalini Shankaran & Ors. Vs. Neelkanth Mahadeo Kamble & Ors.)

(II)(2006) 11 SCC 66

(Kunjbihari Vs. Balram & Anr.)

(III)Criminal Misc.Application No.11552 of 2006.

(Shripal Shah & Ors. Vs. State of Gujarat & Anr.)

(IV)Criminal Misc.Application No.10291 of 2006

(Nirav Navinbhai Shah Vs. State of Gujarat & Anr.)

(V)2006 (0) GLHEL 217097

(Shaileshkumar Ishwarbhai Chauhan Vs.State of Gujarat).

(VI)2005(3) GLH 504

(Rajeshbhai Natwarlal Agarwal Vs. State of Gujarat & Anr.).

(VII)2005(2) GLH 639

(Nitinbhai Mathurdas Thakkar Vs. State of Gujarat).

(VIII)Special Cri.Application No.186 of 2004

(Darpan Vishubhai Patel Vs. State of Gujarat).

(IX)Criminal Misc.Application No.2978 of 2004.

(Vinit Subrahmaniyam Iyer Vs. State of Gujarat).

(X)Criminal Misc.Application No.9495 of 2004

(Vishal Sushikant Shah (via Power of Attorn.Holder) Vs. State of Gujarat).

(XI)Criminal Misc.Application No.11498 of 2004

(Pallaviben Sasikant Shah Vs. State of Gujarat).

(XII)2003 SCC Cri. 848

(B.S. Joshi & Ors. Vs. State of Haryana & Anr.).

(XIII)1998(1) GCD 752 (Guj.)

(Kirit Padmanabh Vyas Vs. State of Gujarat & Anr.).

(XIV)(1996) 5 SCC 591

(CBI, SPE, SIU (X) New Delhi Vs. Duncans Agro Industries Ltd. Calcutta.

22.Relying upon the decisions of the Hon'ble Supreme Court in the cases of Bhagat Ram Vs.Surinder Kumar & Ors., reported in (2004) 11 SCC 622; Devarapali Lakshminarayana Reddy Vs. V.Narayana Reddy & Ors. reported in (1976) 3 SCC 252 and Narayandas Bhagwandas Madhavdas Vs. State of West Bengal, reported in AIR 1959 SC 1118, it is submitted that as held by the Hon'ble Supreme Court power invoked by the Magistrate under sec.156(3) of the Code of Criminal Procedure is at a pre-cognizance stage and the power to

direct investigation conferred by sec.202(1) of the Code of Criminal Procedure is at a post cognizance stage and, therefore, the order passed by the Magistrate in the present case of recalling of complaint from the investigating officer cannot be said as exercise of powers after taking cognizance. It is submitted that the decision relied upon by the other-side on the aspect that the learned Magistrate has no power or authority to interfere with the police investigation, are also not applicable to the present case inasmuch as all such decisions are dealing with the interference by the Magistrate after taking cognizance and issuance of process. Making the above submissions, learned counsel appearing on behalf of the respondent No.3 has requested to dismiss the present application by further submitting that the petitioner has approached this Court with malafide intention and at a belated stage without any basis or foundation.

23. Heard the learned advocates appearing on behalf of the respective parties.

24. A criminal complaint came to be filed against the

respondent Nos.3 to 8 herein – original accused by the respondent No.2 herein – original complainant in the court of learned Judicial Magistrate (First Class), Valod being Criminal Case No.3 of 2004 alleging inter-alia that the accused persons have committed offences punishable under sections 406, 420, 467, 468, 471, 504, 506(2) read with sec.114 of Indian Penal Code alleging serious offences of forgery etc. In the complaint it is stated that the respondent No.2 herein – original complainant is the widow of one Bhadarsinh alias Badarsinh Ratanji who has expired on 10/6/1997 and entry to that effect has been made in the Government Office. It is further alleged in the complaint that the elder brother of the complainant's husband viz.Becharsinh Ratansinh expired on 11/3/1957 and the entry to that effect was also registered with the office of the Panchayat. It was further alleged that another elder brother of the husband of the complainant namely Kubersinh Ratanji Chauhan expired on 14/1/1960 but the entry to that effect was not registered and therefore, the complainant sworn an affidavit stating the date of the death. It was also further alleged in the complaint that the father-in-law of the complainant namely Ratanji Bhulabhai Chauhan was

having agricultural land bearing Survey No.220 admeasuring about 10 Gunthas, situated at Virpore, Taluka Valod, District Surat and after his death, the name of Becharsinh, Kubersinh and Badharsinh were entered in the revenue record on 27/7/1929 vide Entry No.43. It was further alleged that when the complainant got copy of the revenue record in respect of the aforesaid land, she came to know that the name of one Satyajitbhai Ballubhai Desai – respondent No.3 herein is entered and when she inquired about the same from the Talati-cum-Mantri, he gave evasive reply. It was further alleged in the complaint that on further inquiry she came to know that said Satyajitbhai Ballubhai Desai has created a bogus power of attorney on 29/7/2003 in collusion with each other forging signatures of late Becharbhai Ratanjibhai, late Kuberbhai Ratanjibhai and late Badharbhai Ratanjibhai in the name of one Mr.Jaydipbhai Ranchhodbhai Solanki who is a fictitious person. It is also alleged that the said forged power of attorney has forged by the said Satyajitbhai Ballubhai Desai and one Pavanbhai Durlabhbhai stood as witness. It was further alleged that on the basis of said bogus and forged power of attorney, said Jaydipbhai Ranchhodbhai

executed registered sale deed on 2/8/2003. It is alleged that thus, the said Satyajitbhai Ballubhai Desai in collusion with other accused persons have created bogus power of attorney of late Babarbhai; late Becharbhai and late Kuberbhai, who have expired long back and created forged sale deed. It was further alleged in the complaint that as per her knowledge, original accused No.1 has created fictitious persons i.e. original accused Nos.2 and 4 and created bogus power of attorney bearing signature of the Government Officials after making signatures of the persons who have expired long back. It was also further alleged that the said sale deed executed on the basis of bogus power of attorney which is prepared by the accused No.3, signed by the accused No.1 as purchaser of the stamp, accused No.3 identified the accused No.2 and accused No.1 has made false and forged signatures and thus created bogus registered sale deed. It was further alleged in the complaint that she gave complaint to Buhari Out Post Police Station but since the accused No.1 – respondent No.3 herein, is a politician and builder, the police had not taken any step and therefore, she filed the aforesaid criminal complaint / Criminal Case in the court of

learned Judicial Magistrate (First Class), Valod on 8/3/2004. That the learned Judicial Magistrate (First Class), Valod passed a detailed order on 8/3/2004 registering the complaint in the inquiry register and ordering police investigation under sec.156(3) of the Code of Criminal Procedure by further directing Valod Police Station to register the complaint as M.Case / FIR and directing the Dy.Superintendent of Police, Vyara to look into the complaint and investigate the offence and submit report within a period of 90 days. That thereafter the complaint was sent to the Valod Police Station and the same was registered as M.Case No.3 of 2004. That when the investigation was in progress pursuant to the order passed by the learned Judicial Magistrate (First Class), Valod under sec.156(3) of the Code of Criminal Procedure and before any report could be submitted by the investigating officer to the learned Judicial Magistrate (First Class) after completion of the investigation / inquiry, the respondent No.2 – original complainant submitted an application at Ex.4 dtd.14/2/2005 submitting that the complaint filed by her is of civil nature and parties have settled the dispute out of the court and the complaint is sent for investigation

under sec.156(3) of the Code of Criminal Procedure and the investigation / inquiry is going on and no report has been submitted and as the complaint is to be withdrawn, it was requested to recall the order of police investigation under sec.156(3) of the Code of Criminal Procedure and to recall the complaint so that the complaint can be disposed of.

25. That the learned Judicial Magistrate (First Class) on the very day allowed the application at Ex.4 recalling his earlier order directing the police investigation under sec.156(3) of the Code of Criminal Procedure and directed the Dy.S.P., Vyara to return the complaint without further investigation, by recording purses by further observing that the parties have settled the civil as well as criminal disputes. Being aggrieved by and dissatisfied with the same, the petitioners have preferred the present petition.

26. In the present petition the following questions arise for determination by this Court.

(i) When once an order has been passed by the Magistrate ordering police investigation

sec.156(3) of the Code of Criminal Procedure and complaint is sent to the concerned police station and order is passed directing the investigating officer to submit the report after investigation, whether the Magistrate has jurisdiction to recall the said order and dispose of the complaint without any further report by the concerned investigating officer as contemplated under the Code of Criminal Procedure?

(ii) Whether the learned Magistrate, in the facts and circumstances of the case was justified in recording settlement and permitting the original complainant to withdraw the complaint which was filed alleging serious offences of forgery etc. and for the offences which are non-compoundable?

(iii) Whether the applicant being a third party has any locus-standi to oppose the withdrawal of criminal complaint and/or to file the present petition and interfere with the criminal proceedings between two private individuals?

27. It is the contention on behalf of the respondent No.3 – original accused No.1 who has contested the resent petition that the petitioner being a third party and stranger to the proceedings, has no locus-standi to file the present petition and interfere with the criminal proceedings between private individuals. The learned counsel for the respondent No.3 has relied upon the decisions of the Hon'ble Supreme Court in the cases of Rajiv Ranjan Singh (Lalan) (supra); Ashok Kumar Pandey (supra); Kishan Swaroop (supra); Karamjeet Singh (supra); Simranjit Singh Mann (supra); Krishna Swami (supra) and Janata Dal (supra). It is the contention on behalf of the learned advocate appearing on behalf of the respondent No.3 that as held by the Hon'ble Supreme Court, a third party has locus-standi to interfere in a matter which involves the issue related to public administration, public morality and affects the society at large only, but the same is not applicable to the dispute of private nature.

28. On the other hand, it is the contention on behalf of the petitioner that the concept of locus standi is unknown to the criminal jurisprudence and anybody can put the

criminal machinery in motion and even if there are allegations of mala-fides, petition at the instance of the petitioner would be maintainable. The learned counsel for the petitioner has relied upon the decision of the Hon'ble Supreme Court in the case of Sheonandan Pasvan (supra) and Vishwanath Chaturvedi (supra).

29. In case of Sheonandan Paswan (supra) the Hon'ble Supreme Court has observed that a criminal proceeding is not a proceeding for vindication of a private grievance but it is a proceeding initiated for the purpose of punishment to the offender in the interest of society. It is for maintaining stability and orderliness in the society that certain acts are constituted offences and the right is given to any citizen to set the criminal machinery of the criminal law in motion for the purpose of brining the offender to book. In the said decision, the Hon'ble Supreme court has considered the following observations made by the Hon'ble Supreme Court in the case of A.R. Antulay Vs. R.S. Nayak, reported in (1984) 2 SCC 500:-

> “punishment of the offender in the interest of the

society being one of the objects behind penal statutes enacted for the larger good of the society, right to initiate proceedings cannot be whittled down, circumscribed or fettered by putting it into a strait jacket formula of locus-standi....”

In the said decision, the Hon'ble Supreme Court has further observed that the locus-standi of the complainant is a concept foreign to the criminal jurisprudence. It is further observed by the Hon'ble Supreme Court that if any citizen can lodge a First Information Report or file a complaint and set the machinery of the criminal law in motion and his locus-standi to do so cannot be questioned, we do not see why a citizen who finds that prosecution for an offence against the society is being wrongly withdrawn, cannot oppose such withdrawal. If he can be a complainant or initiator of criminal prosecution, he should equally be entitled to oppose withdrawal of the criminal prosecution which has already been initiated. The Hon'ble Supreme Court in para 16 of the said decision has further observed that even if no one had opposed the withdrawal of the prosecution, would the learned Chief Judicial

Magistrate and the High Court have been justified in granting consent to the withdrawal of the prosecution and that would depend certainly on the facts and particulars of the case placed before the court. It is further observed by the Hon'ble Supreme Court in the said decision that a criminal prosecution, if otherwise justifiable and based upon adequate evidence does not become vitiated on account of mala-fides or political vendetta of the first informant or the complainant. Relying upon the observations made in the case of State of Punjab Vs. Gurdial Singh, reported in (1980) 2 SCC 471 it is further observed that if the use of the power is for the fulfillment of a legitimate object the actuation or catalysation by malace is not legicidal. It is also further observed by the Hon'ble Supreme Court that the same principle must obviously apply where a person is opposing withdrawal of prosecution against an accused and his political motivation or vendetta cannot justify grant of consent for withdrawal if otherwise it is not legitimate or justified.

30. Similar view is expressed by the Hon'ble Supreme Court in the case of Vishwanath Chaturvedi (III) (supra)

and it is observed that it is well recognised principle of criminal jurisprudence that any one can set or put the criminal law into motion except where the statute enacting or creating an offence indicates to the contrary. It is also further observed by the Hon'ble Supreme Court that the locus- standi of the complainant is a concept foreign to criminal jurisprudence. It is also further observed in the said decision that the said principle is founded on a policy that an offence i.e. an act or omission made punishable by any law for the time in force, is not merely an offence committed in relation to the person who suffers harm but is also an offence against the society. The society for its orderly and peaceful development is interested in the punishment of the offender. Therefore, prosecution for serious offences is undertaken in the name of the State representing the people which would exclude any element of private vendetta or vengeance. It is also further observed that punishment of the offender in the interest of the society being one of the objects behind penal statutes enacted for the larger good of the society, right to initiate proceedings cannot be whittled down, circumscribed or fettered by putting it into a straight-jacket formula of

locus-standi unknown to criminal jurisprudence, save and except specific statutory exception.

31. Now so far as the decisions relied upon by the learned advocate appearing on behalf of the respondent No.3 namely, Rajiv Ranjan Singh (Lalan) (supra); Ashok Kumar Pandey (supra); Kishan Swaroop (supra); Karamjeet Singh (supra); Simranjit Singh Mann (supra); Krishna Swami (supra) and Janata Dal (supra) are concerned, in all the aforesaid cases, the main question was with regard to filing the public interest litigation by third party. In the case of Kishan Swaroop (supra), a revision was filed by the third party challenging the order of acquittal without obtaining permission of the public prosecutor. Considering all the decisions referred to hereinabove relied upon by the learned advocate appearing for the respondent No.3, it appears that there is no such absolute proposition of law laid down by the Hon'ble Supreme Court in the aforesaid decisions as sought to be canvassed on behalf of the respondent No.3 that a third party has locus standi to interfere in the matter which involve the issue related to public administration, public morality and affected the society

at large only and the same is not applicable to the dispute of private nature. As observed hereinabove, once criminal proceeding is put to motion, there is nothing like a dispute of private nature and the general principle that any one can set or put the criminal law in motion is founded on a policy that an offence i.e. an act or omission made punishable by any law for the time in force, is not merely an offence committed in relation to the person who suffers harm but is also an offence against the society. The society for its orderly and peaceful development is interested in the punishment of the offender. As observed by the Hon'ble Supreme Court in the case of Sheonandan (supra), same principle would be applicable in the case of withdrawal of prosecution wrongly. Under the circumstances, the objection raised on behalf of the respondent No.3 with respect to locus-standi of the petitioner has no substance and is required to be overruled and rejected and is accordingly overruled.

32. Even the objection on behalf of the respondent No.3 that the present proceedings are initiated for mlafides and therefore the same deserves to be dismissed and also

cannot be accepted for the reasons stated above and considering the decisions of the Hon'ble Supreme Court in the case of Sheonandan Paswan (supra) and Vishwanath Chaturvedi (III) (supra).

33. Apart from that even it is the submission on behalf of the petitioner to exercise suo-motu revisional power in the facts and circumstances of the case, more particularly when it is submitted that the order passed by the learned Magistrate recalling his earlier order of police inquiry under sec.156(3) of the Code of Criminal Procedure and permitting the original complainant to withdraw the complaint without there being any further report by the concerned investigating officer as contemplated under the provisions of the Code of Criminal Procedure, is absolutely illegal and unknown to the provisions of law, more particularly the scheme of the Code of Criminal Procedure. For the same reason, the learned advocate appearing on behalf of the petitioner has also requested to exercise powers under Article 226 of the Constitution of India read with sec.482 of the Code of Criminal Procedure.

34. Now, the next question which is required to be considered by this Court is whether the learned Magistrate was justified in recalling the order passed by him directing police investigation under sec.156(3) of the Code of Criminal Procedure and recording settlement and thereby consequently permitting the original complainant to withdraw the complaint which was filed alleging commission of the serious offences? Looking to the scheme of the Code of Criminal Procedure, once an order is passed by the Magistrate ordering investigation under sec.156(3) of the Code of Criminal Procedure, under the Code of Criminal Procedure the Magistrate does not possess any inherent power to recall the said order. There is no express provision enabling the Magistrate to recall his order of directing police investigation. As held by the Hon'ble Supreme Court in the case of Adalat Prasad (supra), the Magistrate cannot exercise inherent power in absence of any review power or inherent power when it is not specifically provided under the provisions of the Code of Criminal Procedure. The similar view has been expressed by the Hon'ble Supreme Court in the case of Subramanium Sethuraman (supra). Under the circumstances, the order passed by

the learned Magistrate recalling his earlier order of investigation by Dy.S.P. under sec.156(3) of the Code of Criminal Procedure and to recall the complaint, is unknown to the provisions of the Code of Criminal Procedure, absolutely illegal and without jurisdiction and the same cannot be sustained.

35. It is also the contention on behalf of the petitioner that even otherwise the order of learned Magistrate virtually amounts to interfering with the investigation which was being carried out by the police or the investigating officer and the Magistrate has no power or jurisdiction to decide not to put the accused to trial and form an opinion regarding culmination of the investigation. It is also the contention on behalf of the petitioner that the investigating officer, subject to supervisory jurisdiction of his superior officers, has exclusive powers of investigation and the said powers cannot be exercised by any authority, including any court and including the court of Judicial Magistrate (First Class).

36. In case of R.Sarala (supra), the Hon'ble Supreme Court has considered the following observations made in the

case of Abhinandan Jha Vs. Dinesh Mishra, reported in AIR 1968 SC 117and considering the same,the Hon'ble Supreme Court held that whether or not there is a case to place the accused on trial should be that of officer in charge of the police station and none else:-

> “We have already pointed out that the investigation, under the Code, a takes in several aspects, and stages, ending ultimately with the formation of an opinion by the police as to whether, on the material covered and collected a case is made out to place the accused before the Magistrate for trial, and the submission of either a charge-sheet, or a final report is dependent on the nature of the opinion, so formed. The formation of the said opinion, by the police, as pointed out earlier, is the final steps in the investigation, and that final step is to be taken only by the police and by no other authority.”

The similar view has been expressed by the Hon'ble Supreme Court in the case of Abhinandan Jha (supra), Prakash P.Hinduja (supra), Abraham (supra) and Gangadhar Janardan Mhatre (supra). Even otherwise,

considering the scheme of the Code of Criminal Procedure and various stages, once the order is passed by the learned Magistrate for sending the complaint to the concerned police station for investigation under sec.156(3) of the Code of Criminal Procedure, it will become the police case and the proceedings would be culminated only on submitting appropriate report as contemplated under sec.169 of the Code of Criminal Procedure or filing of the charge-sheet against the accused persons and therefore, once a complaint is sent to the concerned police station for investigation under sec.156(3) of the Code of Criminal Procedure and the same is registered as FIR / M.Case, nothing would remain with the learned Magistrate on which he can pass an order. Under the circumstances, the impugned order passed by the learned Magistrate recalling his earlier order of sending the complaint for investigation under sec.156(3) of the Code of Criminal Procedure and recording settlement and thereby consequently permitting the original complainant to withdraw the complaint and consequently putting an end the criminal proceedings against the accused persons, is wholly without jurisdiction and without authority under law and

unknown to the provisions of the Code of Criminal Procedure and the scheme of the Code of Criminal Procedure. Therefore, even when the impugned order is brought to the notice of this Court, this Court also could have exercised power under Article 226 of the Constitution of India read with sec.482 of the Code of Criminal Procedure and/or suo-motu revisional jurisdiction. If inspite of these facts the impugned order passed is not interfered with, the same would amount to give premium to the illegal order.

37. It is also required to be noted that the offences alleged against the accused persons are serious offences of forgery etc punishable under sections 406, 420, 467, 468, 471, 504, 506(2) read with sec.114 of Indian Penal Code alleging inter-alia that the accused persons have created forged and bogus power of attorney of dead persons in the name of fictitious persons in collusion with each other bearing signature of dead persons and on the basis of which created forged sale deed and sold the property and even it is further alleged that the original accrued No.1 has created fictitious persons i.e. accused Nos.2 and 4 and created bogus power of

attorney bearing signatures of the government officials after making signatures of the persons who have expired long back. Under the circumstances, considering the serious allegations also the learned Magistrate ought not to have recorded pursis of settlement and ought not to have recalled the order of investigation under sec.156(3) of the Code of Criminal Procedure. The learned Magistrate ought to have appreciated that once the complaint is filed, the accused persons who have committed offences must be punished and punishment of the offender in the interest of society is one of the objects behind the penal statutes and enacted for the larger good of the society. Under the circumstances, merely because subsequently original complainant who must have been rewarded by giving handsome amount and thereby entering into settlement, the learned Magistrate ought not to have recorded the settlement and bringing the criminal proceeding to an end.

38. It is also required to be noted that most of the offences alleged are non-compoundable. Of course, the learned advocate appearing on behalf of the respondent No.3 has relied upon some decisions in support of his submission

that even in non-compoundable offences, the Hon'ble Apex Court and this Court has permitted compounding of non-compoundable offences and thereby quashed the complaints. However, it is required to be noted that the powers which are exercised by the Hon'ble Supreme Court and/or by this Court are in exercise of power under sec.482 of the Code of Criminal Procedure i.e. In exercise of inherent power, which the learned Magistrate is not possessing. Under the circumstances, the decisions relied upon by the learned advocate appearing on behalf of the respondent No.3 will not be of any assistance to the respondent No.3 in absence of any inherent power vested with the learned Magistrate.

39. Under the circumstances and for the reasons stated hereinabove, the impugned order passed by the learned Magistrate recalling his earlier order of investigation sending the complaint to the concerned police station for investigation under sec.156(3) of the Code of Criminal Procedure, is wholly without jurisdiction and without authority under the law and even on merits also, looking to the serious allegations, the learned Magistrate could not have passed such order putting an end to the

criminal prosecution in a case involving serious offences and therefore, the impugned order deserves to be quashed and set aside and is accordingly quashed and set aside. Rule is made absolute. The Dy.Superintendent of Police, Vyara, investigating officer is now to proceed further with the investigation and complete the same as ordered by the learned Magistrate earlier and submit appropriate report before the learned Magistrate in accordance with the provisions of the Code of Criminal Procedure.

(M.R. SHAH, J.)

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